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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement*/ submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

The International Federation of Human Rights (FIDH) and its affiliate organization Human Rights in China (HRIC) remain deeply concerned about the extensive and systematic violations of human rights continuing in the People's Republic of China (PRC). The Chinese Government has failed to act to end these egregious abuses, despite the accumulation of detailed documentary evidence of them. In addition, the Government refuses to cooperate in anything more than a pro forma way with human rights monitoring mechanisms, both intergovernmental and non-governmental. Therefore, our organizations believe that the Commission on Human Rights should thoroughly examine China's rights situation.

Patterns of rights violations show that **impunity** and **lack of accountability** are a principal cause of human rights abuses in China. Mechanisms to hold officials accountable are deficient or non-existent. Controls on freedom of expression and association make it very difficult for people to expose abuses by officials and to achieve accountability. For example, the crime committed against the unarmed people of Beijing on June 4, 1989 remains uninvestigated and unpunished, despite the efforts of the victims' families acting under the banner of the Tiananmen Mothers. In June 1999, these families asked China's Supreme People's Procuratorate to initiate a criminal investigation in order to determine the legal responsibility of the perpetrators. To date they have received no reply. These families are subjected to constant harassment: from brief detentions and house arrest to surveillance and the confiscation of humanitarian funds sent from abroad—all clear violations of the rights set forth in the **Declaration on Human Rights Defenders**. Others who have sought to document the facts of what happened in 1989 and challenge the official silence on the matter have fared even worse. On December 26, 2000, after more than a year and a half in incommunicado detention, **Jiang Qisheng** was sentenced to four years in prison for circulating an open letter suggesting peaceful activities to commemorate the tenth anniversary of the June Fourth Massacre, such as lighting candles at home. Since 1995, **Li Hai** has been serving a nine-year prison term solely for collecting a list of names of Beijing residents serving long terms for their participation in the 1989 demonstrations.

The ongoing repression against Falungong practitioners and members of the China Democracy Party (CDP) illustrates the Government's lack of respect for the rights to freedom of expression, association, religion and conscience. The Falungong movement and the CDP have both been officially banned. Falungong practitioners have been given extremely harsh sentences of up to 20 years, some 50,000 are reported to have been detained and over 90 individuals have allegedly died in custody.

The crackdown on the CDP began immediately after China's signing of the International Covenant on Civil and Political Rights (ICCPR) in October 1998. Since then more than 30 CDP members have been sentenced to prison, and many more sent to serve administrative terms of Reeducation Through Labor. Some are being ill-treated in prison. **Wu Xilong**, who is serving an 11-year sentence after his trial in October 1999, has been held in solitary confinement for nearly seven months after

staging hunger strikes to protest restrictions by prison authorities on visits by his wife. A CDP founding member, Wu was detained in April 1999.

The sometimes daily spectacle of Falungong practitioners being beaten bloody in Tiananmen Square is a reminder that **torture** remains a systemic problem in China that potentially affects all individuals deprived of their liberty. Torture and ill-treatment have not declined despite various revisions made to relevant laws and regulations: in spite of the 1996 revisions to the Criminal Procedure Law, defendants and suspects continue to be deprived of their right to due process, including access to legal counsel, the right to remain silent and the right against self-incrimination; and coerced statements and evidence are still not excluded from admission at trial. FIDH and HRIC welcome the recommendations by the UN Committee Against Torture (CAT) in May 2000 and urge the Government to implement them.

Although CAT recommended that China eliminate all forms of **administrative detention**, FIDH and HRIC are concerned about the use of Reeducation Through Labor (RTL) and Custody and Repatriation (C&R), which violate both international human rights standards and Chinese law.

RTL is applied by the public security departments, without any judicial proceedings or review, to people who have committed acts "too minor" to merit prosecution. Those sentenced to RTL are deprived of the minimum guarantees of due process. The maximum term of three years can be extended by one year. By the late 1990s, around 200,000 people were being held in RTL annually, as compared to around 150,000 in the early 1990s.

C&R allows for the detention, without any legal recourse, of people considered undesirable by urban authorities, and whose household registration is not located in the city where they are living or working. Targets include beggars, street children, prostitutes, the mentally ill and, increasingly, migrant workers. C&R is estimated to affect over two million people annually, with some five to 20 percent of these being children. A legacy of the strict urban-rural divide, C&R is the enforcement arm of a discriminatory system that relegates rural people to second class citizenship.

While China has signed both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), it has failed to ratify these treaties. The Government is reportedly considering entering a reservation under Article 8 of the ICESCR on **trade union rights**. China currently prohibits the exercise of the right to form and join independent trade unions not affiliated to the official All-China Federation of Trade Unions, and repression against labor rights advocates continues unabated. **Li Bifeng** was sentenced in April 1998 to a seven-year term after he released information about protests by laid-off workers; and **Zhang Shanguang** was sentenced to 10 years' imprisonment in December 1998, after a two-hour trial held behind closed doors. Zhang's attempt at establishing the Association to Protect the Rights and Interests of Laid-off Workers is considered the principal reason for this harsh sentence. Most recently, in December 2000 the leader of an attempt to set up an independent union in Jiangsu, **Cao Maobing**, was forcibly committed to a mental institution.

Although states are not expected to have all their laws and practices in compliance with a human rights instrument at the time of ratification, the treaty monitoring process is designed to assist in achieving compliance, through identifying areas in which change is needed and recommending how this should be done. Reservations defeat the purpose of ratifying instruments and are thus counter-productive. Therefore, the Chinese Government should be encouraged to harmonize its legislation and practice with internationally-recognized standards by ratifying both Covenants without any reservation.

Generally, China's co-operation with the UN human rights regime leaves much to be desired. For example, the Government has postponed indefinitely a visit by the Special Rapporteur on Torture because it refuses to accept the UN experts' agreed methods for conducting fact-finding missions.

HRIC and FIDH are also concerned that the signing of the Memorandum Of Understanding (MOU) between the Government of China and the Office of the High Commissioner for Human Rights (OHCHR) sends an inappropriate signal given China's inadequate co-operation with the UN human rights mechanisms. In addition, the wording of the MOU downplays international rights instruments: rather than encouraging China to harmonize its law and practice with international human rights standards, the MOU sets its objective as promoting "better mutual understanding of human rights issues." The only acceptable "understanding" of human rights issues is one based on international standards. FIDH and HRIC believe that such language calls into question China's commitment to the universality of human rights standards.

In view of the ongoing human rights violations occurring in China and of the Government's failure to cooperate in good faith with the UN human rights mechanisms, FIDH and HRIC believe that it is crucial that the Commission on Human Rights adopt a resolution on China's human rights situation. Any attempt by the Government to use a no-motion action—a de facto veto procedure that conflicts with the Commission's mandate to examine the human rights situation in all countries in the world—should be rejected.

A resolution on the human rights situation in China should address the above concerns. It should urge the Chinese Government to ratify both the ICESCR and the ICCPR without any reservation, and to implement the provisions of these two instruments; it should call on the Government to release immediately and unconditionally all prisoners of conscience and to allow all Chinese citizens to fully enjoy their rights to freedom of expression, assembly, association and religion; it should invite the Government of China to co-operate fully with the OHCHR, and in particular to agree to the Terms of Reference governing fact-finding missions by the Commission's thematic mandates. Lastly, the resolution should request that the UN Secretary General draft a report on the human rights situation in China, to be presented at the next session of the Commission on Human Rights.

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement*/ submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

Introduction

1. The International Federation of Human Rights (FIDH) and its Northern Ireland affiliate, the Committee on the Administration of Justice (CAJ) believe that issues of justice, rights and fairness have been at the heart of the conflict in Northern Ireland. The Good Friday Agreement envisaged new policing and criminal justice arrangements based on respect for human rights and the rule of law. CAJ and FIDH welcomed the commitments to human rights contained in the Good Friday Agreement. However, we have become increasingly concerned at the resistance of the United Kingdom to translating those commitments into legislation and practice. In particular, in relation to policing, the United Kingdom government has proved extremely unwilling to establish effective public accountability mechanisms should police officers commit human rights abuses in the future, or to investigate those which have occurred in the past. We are concerned that this resistance to necessary change in the areas of policing and human rights protection may well undermine the progress, which has been made in the context of the peace process in Northern Ireland.

2. Given the centrality of human rights to the peace process in Northern Ireland, it is vital that the United Kingdom complies with human rights standards by, inter alia, implementing the recommendations of the Special Rapporteur on the Independence of Judges and Lawyers following his reports on Northern Ireland, presented to the Commission in 1998, 1999 and 2000 and the recommendations of the Committee Against Torture in November 1998. Additionally we urge action to remedy a number of outstanding human rights concerns, many of which have been the subject of previous comment by the Human Rights Committee (1991 & 1995), the Committee Against Torture (1991 & 1995), the Commission on Human Rights (1993, 1994, 1996, 1998, 1999 &2000), the Sub-Commission (1992, 1993, 1994 & 1996), the European Committee for the Prevention of Torture (1994) and have been the cause of several adverse findings against the United Kingdom in the European Court of Human Rights.

3. Regrettably the United Kingdom government has failed to respond adequately to these concerns.

Report of the Special Rapporteur on the Independence of Judges and Lawyers

4. In our written submission to the Commission last year the FIDH and CAJ expressed our concern in relation to the murder of CAJ Executive member and defence lawyer, Rosemary Nelson on 15th March 1999.

5. Concerns in relation to the safety of Rosemary Nelson had been brought to the attention of the United Kingdom government prior to her murder by both CAJ and the Special Rapporteur on the Independence of Judges and Lawyers. When the Special Rapporteur presented his report to the Commission in 1998, he drew particular attention to her case. Although unnamed by the Special Rapporteur, his report describes how Rosemary Nelson had been the "victim of numerous death threats owing to the representation of a client, who had been charged with the murder of two RUC [police] officers." The Special Rapporteur went on to describe how RUC officers had allegedly assaulted Rosemary Nelson and subjected her to sectarian abuse.

6. On 10th August 1998 CAJ wrote to the Minister of Security in Northern Ireland, Mr Adam Ingram enclosing copies of a hand-written threat to Rosemary Nelson's life and a one-page pamphlet threatening a local nationalist leader, which also referred to Rosemary Nelson, his solicitor. The pamphlet included Rosemary Nelson's business address and telephone number. In our letter to the government we reminded them of the Special

Rapporteur's recommendation in relation to the need to protect lawyers who were under threat.

7. On 24th September 1998 we received a response from the government indicating that the documents had been passed to the Chief Constable's office for investigation. The letter indicated that the police would assess the security risk against Mrs Nelson. The police did not contact us nor, insofar as we are aware, did they contact Mrs Nelson. However, on 22nd March 1999, a few days after Rosemary Nelson was killed, detective officers visited CAJ's office seeking the originals of the two documents that CAJ had sent to Minister Ingram. The officers explained that the Royal Ulster Constabulary (RUC) wanted to run forensic tests on the originals. Specifically, the RUC was going to test the documents for fingerprints and for any DNA evidence.

8. It was therefore clear that the RUC had only begun to search for the originals after Ms. Nelson's death. We could not understand why the police had not sought the originals to subject them to forensic examination during the investigation, which presumably followed them receiving the documents the previous summer. The RUC's failure to look for the documents before Ms. Nelson's death raised very serious questions about the efficacy of the initial investigation. It seemed clear that the RUC could have done more to protect Ms. Nelson. Indeed in our view it was possible that those responsible for producing the two documents may have been identified by way of forensic tests if the originals had been obtained prior to Rosemary Nelson's murder. Indeed this must also have been the view of the RUC given that the reason they sought the originals was to determine if there were fingerprints or DNA evidence on them.

9. CAJ and FIDH are concerned that although the government was warned on a number of occasions about threats to Rosemary Nelson's life, it did not provide the necessary protection for her nor did it vigorously investigate the threats against her.

10. CAJ have attempted to obtain an explanation as to what steps were taken by the police in the seven months between their receipt of the threats and Ms Nelson's death. Eighteen months after first raising this issue we have yet to receive an adequate reply from the authorities, either police or governmental. Consequently, we recently lodged a formal complaint with the newly established office of the Police Ombudsman in Northern Ireland in relation to the failure of the police properly to investigate the threats, which were forward to the authorities by CAJ.

11. FIDH and CAJ have also expressed concern at the fact that the murder of leading defence lawyer, Patrick Finucane, in 1989 remains unsolved. Last year in response to demands for the establishment of a public inquiry into the murder, a further police investigation into the murder was launched. This investigation is continuing although, insofar as we are aware no security force member, has yet been charged in connection with the murder.

12. Earlier this year the Prime Minister, Tony Blair, informed CAJ that the United Kingdom would not consider establishing a public inquiry in the Finucane case until the completion of the new police investigation and any subsequent criminal proceedings. CAJ and FIDH are concerned that this effectively precludes the truth about the Finucane murder from being established for at least two years.

13. In April 1998 the Special Rapporteur presented his findings on his visit to Northern Ireland to the United Nations Commission on Human Rights. He said that there should be an independent judicial inquiry into the murder of Patrick Finucane to resolve the outstanding questions of official involvement in his murder. FIDH and CAJ support these conclusions. We do not believe that the renewed criminal investigation will be successful in uncovering the truth about security force involvement in the murder. This belief is

reinforced by the fact that the police officer in charge of the investigation has confirmed that he will not publish his final report but that it will be forwarded to the Chief Constable, and if appropriate the Director of Public Prosecutions. CAJ does not believe that oversight by these two individuals, both of whom have been linked to the controversy surrounding the case, is likely to inspire confidence in the investigation's ability to resolve the issues raised by the Finucane murder.

Conclusion

14. FIDH and CAJ believe that the cornerstone for a peaceful and democratic society must be respect for the rule of law. We believe it is essential, if lasting peace is to be established in Northern Ireland, that the government act immediately on the recommendations of the Special Rapporteur Mr Cumaraswamy. Additionally, the UK government should swiftly implement the recommendations of the Committee Against Torture (1998 and 1995) and those of the Human Rights Committee (1995) by reconstructing the RUC and dismantling the apparatus of emergency laws currently operating in Northern Ireland. Regretfully the United Kingdom government has shown little willingness to implement these recommendations. The emergency laws in Northern Ireland have recently been combined and placed on a permanent footing in one piece of United Kingdom wide legislation, the Terrorism Act. While change is being contemplated in relation to the police, the government has steadfastly resisted placing statutory obligations on the new policing service to protect international human rights standards beyond those limited standards already incorporated into domestic law. We request the Commission to urge the government of the UK to comply immediately with its international human rights obligations in this regard.